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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/738,417	12/17/2003	Jerry D. Ham		8341

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EXAMINER	
JOHNSON, STEPHEN	

ART UNIT	PAPER NUMBER
3641	

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/738,417	HAM, JERRY D.	
	Examiner	Art Unit	
	Stephen M. Johnson	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 March 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) *1-9* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-19* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. Applicant's election with traverse of the group II invention directed to a neutralizing system in the reply filed on 3/6/2006 is acknowledged. The traversal is on the several grounds.

It is argued that since only 2 subclasses require searching, no serious burden is present. This argument is not convincing because it is not accurate. The classes and subclasses listed in the previous Office action are directed only to two different places that the different inventions would be classified. This in no way limits the field of search as argued by applicant. Numerous other classes and subclasses may be searched. Further, text searches (one of the most common ways of searching) would require different terminologies associated with each of the different inventions. Since the searches are very different for each of these inventions and because applicant has only paid fees entitling him to a single invention, the requirement directed to serious burden is clearly met.

Applicant has made some suggestions as to other possible processes that might be associated with the claimed invention. Please note that if the product as claimed could be used in a materially different process, restriction is appropriate. Note that carbon dioxide made be used in neutralizing fires (see US 2,857,005; US 5,062,486; and 5,651,417) as well as neutralizing terrorists. Further, in these instances there would be no need to calculate the amount of carbon dioxide inserted; one of the features argued by applicant. Also note that in instances where carbon dioxide could be inserted to neutralized terrorists, measuring carbon dioxide would only be effective in a closed system (i.e. a system where the carbon dioxide would not leak or dissipate into the surrounding environment).

Also note that applicant has already received an action on the merits in this case (see the Office action mailed on 4/13/2005). A second action on the merits in included with this Office action.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-9 are withdrawn from consideration as being directed to a non-elected invention. Claims 10-19 read on the elected invention and an action on these claims follows.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 10-15 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts (753) in view of Medlock (005) or Coughlin (417).

Roberts (753) discloses a neutralizing system comprising:

a) a source of fire suppressant;	attached to hose 14
b) manual non-explosive means to create and opening;	12, 18
c) a battering ram and hole punch/hollow lance;	12, 18
d) a tank with hose;	14, supply means attached thereto
e) means for delivering the fire suppressant;	12
f) a valve to control flow; and	col. 2, lines 44-46
g) openings associated with the lance.	see fig. 3

Roberts applies as recited above. However, undisclosed is a fire suppressant that is carbon dioxide. Medlock (col. 2, line 6) and Coughlin (col. 23, line 8) each teach a fire suppressant that is carbon dioxide. Applicant is substituting one type of fire suppressant for another in an analogous art setting as explicitly encouraged by both the primary (see col. 1, lines 18-19; and col. 3, lines 62-65 of Roberts) and secondary references (see col. 23, lines 1-10 of Coughlin). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Medlock or Coughlin to the Roberts neutralizing system and have a neutralizing system that uses a different type of fire suppressant material.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 10-19 are rejected under 35 U.S.C. 102(b) as being anticipated by McClenahan (486).

McClenahan (486) discloses a neutralizing system comprising:

a) a source of carbon dioxide an odorant;	col. 1, lines 12-22
b) manual non-explosive means to create and opening;	12, 13, 77, 78
c) a battering ram and hole punch/hollow lance;	12, 13
d) a tank with hose;	col. 3, lines 36-40
e) means for delivering the fire suppressant;	12
f) a valve to control flow; and	col. 3, lines 36-40

g) openings associated with the lance. see figs. 2, 3

6. Claims 10-15 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Coughlin (417).

Coughlin (417) discloses a neutralizing system comprising:

a) a source of carbon dioxide an odorant; col. 23, lines 1-10

b) manual non-explosive means to create and opening; 41, 43, 19, 23, 24

c) a battering ram and hole punch/hollow lance; 19, 41, 51

d) a tank with hose; 29, 35

e) means for delivering the fire suppressant; see figs. 2, 3

f) a valve to control flow; and 37

g) openings associated with the lance. 51

7. Applicant's arguments with respect to claims 10-19 have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877 and whose e-mail address is (Stephen.Johnson@uspto.gov). The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.

STEPHEN M. JOHNSON
PRIMARY EXAMINER

Stephen M. Johnson
Primary Examiner
Art Unit 3641

SMJ
April 29, 2006